LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 25 1963
JOHN F. DAVIS, CLERK

No. 150

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 700

DECK SCOW CAPTAINS LOCAL 335, INDEPENDENT,
PETITIONER

v.

HARBOR CARRIERS OF THE PORT OF NEW YORK AND ITS MEMBERS, ET AL.[1]

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATE COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

This petition seeks review of the judgment of the court of appeals denying enforcement of an order entered by the National Labor Relations Board against Harbor Carriers of the Port of New York (an employer association), certain other employers, and Deck Scow Captains Local 335, United Marine Division, National Maritime Union, AFL–CIO. Petitioner was the charging party before the Board, prevailed before the Board, and was permitted to intervene in the court of appeals.

[1] This is the correct caption of this case. The petition bears the caption of the proceedings in the court of appeals.

673302—63

The principal question presented is whether substantial evidence supports the Board's findings that Harbor Carriers and the other employers withdrew recognition from the union with which they had an existing contract and recognized and dealt with another union, thereby violating Sections 8(a)(1), (2), (3) and (5) of the National Labor Relations Act.[2] These ultimate findings turn, as the court below recognized (Pet. 31), on the validity of the Board's subsidiary finding that petitioner Local 335, Independent is the same union as the original Local 335, UMD–NMU, and that the entity now claiming to be Local 335, UMD–NMU is a different union.

The Board found that, in 1959, Harbor Carriers and the other employers entered into contracts with Local 335, UMD–NMU, as the representative of their employees working on scows. In May 1960, while the contracts were still in effect, several of the local's officers resigned and, at a meeting attended by about one-fifth of the local's total membership, there was a vote to disaffiliate from the UMD. In the meantime, the UMD notified the employers that a temporary administrator had been appointed to operate the local and that they should thereafter deal with him on matters concerning the contract. The employers recognized the temporary administrator of Local 335, UMD–NMU, and let him apply the existing contracts; they declined to recognize Local 335, Independent

[2] The Board also found that the other union, by requesting enforcement of the union security provisions of that contract, violated Section 8(b)(2) and (1)(A) of the Act.

[3] The facts hereafter set forth are detailed in the opinion of the court below (Pet. 27–28).

which claimed to be a continuation of the original Local 335, UMD–NMU. The Board concluded, in agreement with Local 335, Independent, that the entity represented by the temporary administrator was in reality a different labor organization. Accordingly, the Board held that the employers unlawfully refused to bargain with Local 335, Independent by withdrawing recognition from it, and illegally assisted the current Local 335, UMD–NMU and unlawfully discriminated by extending the contracts to it and by enforcing their union security provisions in its favor.

The court of appeals (Judge Kaufman dissenting) held that the evidence did not support the Board's finding that Local 335, Independent was a continuation of the original Local 335, UMD–NMU. The court ruled that the entity represented by the temporary administrator was the real Local 335, UMD–NMU. Hence, the court held that the employers acted properly in continuing to recognize Local 335, UMD–NMU, and in permitting it to administer the existing contracts. (Pet. 31–39.)

The court of appeals appears to have applied the proper standard of review under *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474.[1] While the Board disagrees with the court's evaluation of the evidence in this case, it does not believe that this factual question warrants further review, and it is, therefore, not filing a petition for a writ of certiorari.[2] If, however, the Court grants

[1] In addition to the evidentiary issue, petitioner argues (Pet. 16–19) that the appointment of the temporary administrator, without complying with the provisions of Title III of the

the present petition, the Board intends to participate in defense of its order.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

STUART ROTHMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

ELLIOTT MOORE,
Attorney,
National Labor Relations Board.

JANUARY 1963.

Labor-Management Reporting and Disclosure Act of 1959, raises important questions concerning the "interplay of the provisions" of that statute and the National Labor Relations Act. As petitioner recognizes (Pet. 16), however, the court of appeals found it unnecessary to reach the issue, since it ruled that the Board's finding was not supported by substantial evidence. In these circumstances, we do not believe that the issue is properly before the Court. In any event, the argument ignores Section 603(b) of the LMRDA (73 Stat. 540), which provides in pertinent part that the provisions of Title III shall not be construed "to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended."